



AB 240

New Requirements for California's Mutual Water Companies

On October 8, 2013, Governor Jerry Brown signed Assembly Bill (AB) 240 into law. AB 240 took effect on January 1, 2014 and imposes new requirements on mutual water companies in a variety of subject areas, including:

- Opening board of directors' meetings to specified "eligible persons"
- Making certain mutual water company records open to inspection by such "eligible persons"
- Requiring annual budgets and financial reviews

This document will discuss the background of AB 240, and then examine the various requirements. It is intended to solely serve as guidance to small water systems impacted by the new law. The California Association of Mutual Water Companies thanks **Jim Ciampa and Andy Turner at the law firm of Lagerlof, Senecal, Gosney & Kruse** for all their contributions to this document.

BACKGROUND

AB 240 was authored by **Assembly Member Anthony Rendon** D-Lakewood (*pictured at right*). As introduced on February 5, 2013, it provided statutory authority for mutual water companies to record liens to collect delinquent accounts. That provision was necessary because a county recorder refused to record a mutual water company's notice of lien on a shareholder's property, claiming that mutual water companies lacked statutory authority to record such liens. AB 240 also specified that the directors' training required by AB 54 (enacted in 2010) would need to be renewed every six years, as AB 54 did not include any time requirement for the required renewal of that training.



Assembly Member Rendon also included legislative intent language regarding the creation of a special district to provide water service in the City of Maywood, located southeast of downtown Los Angeles, where three mutual water companies currently provide water service. AB 240 unanimously passed the State Assembly in the form in which it was introduced.



However, on June 6, 2013, Assembly Member Rendon amended the bill to add provisions that would have made the Brown Act and Public Records Act applicable to mutual water companies, as well as requiring an annual audit of each mutual water company's financial statements.

Many mutual water companies found those provisions unacceptable and an extensive negotiation and lobbying effort ensued. Leaders of the California Association of Mutual Water Companies led the effort to fight the amended version of AB 240. The lobbying effort almost defeated the bill, and the negotiation efforts resulted in deleting many onerous and impractical provisions from AB 240. The final provisions of AB 240, as enacted into law, are described on the following page.



AB 240’s Provisions

AB 240’s provisions can be broken down into five categories: (1) open meeting requirements; (2) record inspection requirements; (3) financial requirements; (4) lien recording authority; and (5) AB 54 training renewal. The remainder of this article will review each of those areas.

- **Open Meeting Requirements.** AB 240 enacted the *Mutual Water Company Open Meeting Act* (the “Act”), which sets forth various requirements for board of directors’ meetings. The Act defines a “meeting” as a congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business that is within the board’s authority. The open meeting requirements apply to any mutual water company that operates a “public water system,” i.e., a system that provides service to 15 or more service connections. The Act includes the following requirements:
 - ✓ **Notice - Timing.** Notice of board meetings must be provided to “Eligible Persons” (*defined below*) at least four days before the meeting, unless the meeting is an emergency meeting, in which case prior notice is not required. Also, if the board meeting will consist only of an “Executive Session“ (*defined below*), the notice must be given at least 2 days before the meeting.
 - ✓ **Notice - How Given.** Notice is to be given by posting the notice in a “prominent, publicly accessible place or places” within the company’s service area, and by mail to any “eligible person” who has requested such notice, and the company may recover the reproduction and mailing costs for such requested notice. At the company’s option, the notice may be mailed to each shareholder or sent by e-mail or other electronic means if the recipient consents.
 - ✓ **Notice - What it Must Contain.** The notice must contain the time and place of the board meeting and must include the agenda for the meeting.
 - ✓ **Attendance - Eligible Persons.** Except for executive sessions, board meetings must be open to all “eligible persons.” However, to be able to attend such a board meeting, an eligible person must provide at least 24 hours advance written notice of his or her intent to attend the meeting. The Act defines “eligible persons” as any one of the following: (1) a shareholder of the company; (2) a tenant or other occupant of property that receives water service from the company; (3) an ***elected*** city or county official who represents people who receive drinking water from the company on a retail basis; or (4) any other person eligible to participate in the company’s board meetings under the company’s articles of incorporation or bylaws. An eligible person in attendance at a board meeting must be allowed to speak, but the board can establish a reasonable time limit for such comments.
 - ✓ **Executive Sessions.** Eligible persons may be excluded from executive sessions of the board of directors that consider: (1) litigation; (2) matters relating to the formation of contracts with third parties; (3) shareholder discipline, provided that the shareholder that is the subject of any fine, penalty or other discipline has the right to attend the executive session; (4) personnel matters; or (5) a shareholder’s payment of assessments where the shareholder requests the meeting in executive session.



AB 240’s Provisions: Continued

- ✓ **Limitation to Agendized Items: No Action Outside of Meeting.** Subject to the exceptions listed in the next check point, mutual water company board members are now prohibited from discussing or taking action at a board meeting on any items under the board’s authority that are not included on the agenda for the board meeting. Board members are also prohibited from taking action on any items outside of a board meeting unless the item has been delegated by the board to another person or entity, or to a board committee made up of less than a majority of the board’s members.

- ✓ **Exceptions to Agenda Limitation.** There are several exceptions to the general rule prohibiting discussion and action on non-agenda items. Under those exceptions, a board member may do any of the following regardless of whether the item is set forth on the meeting agenda:
 - (1) Briefly respond to statements made or questions posed by a person speaking at a meeting.
 - (2) Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, whether in response to questions posed by an eligible person or based upon his or her own initiative.
 - (3) Provide a reference to, or provide other resources for factual information to, the company’s officers or staff.
 - (4) Request that the company’s officers or staff report back to the board at a subsequent meeting concerning any matter, or direct that a matter of business be placed on a future agenda.
 - (5) Direct the company’s officers or staff to perform administrative tasks that are necessary to carry out the Act’s requirements.
 - (6) The board may also take action on any item of business not on the agenda that is posted and distributed under any of the following conditions (provided that when the board begins discussing the item, it must first openly identify the item to the persons in attendance at the meeting):



- (i) Upon a determination made by a majority of the board present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, because of necessity, make it impracticable to provide notice. This scenario applies to a particular item of business, rather than calling an emergency meeting as discussed in the “Emergency Meetings” section below.
- (ii) Upon a determination made by the board by a vote of two-thirds of the directors present at the meeting, or, if less than two-thirds of the board is present at the meeting, by a unanimous vote of the directors present, that (a) there is a need to take immediate action, and (b) the need for that immediate action came to the board’s attention after the agenda was posted and distributed.
- (iii) The item appeared on an agenda that was posted and distributed for a prior board meeting that occurred within 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.



AB 240’s Provisions: Continued

- ✓ **Minutes.** The minutes of any board meeting conducted after January 1, 2014, other than minutes of any executive session, must be made available to eligible persons within 30 days of the meeting if requested by an eligible person and after the eligible person pays the company’s costs incurred in providing those minutes. Matters discussed in executive session must be generally noted in the minutes of the immediately following meeting that is open to eligible persons.



- ✓ **Emergency Meetings.** An emergency meeting may be called by the company’s president or board chairman, or by any two other board members if unforeseen circumstances require immediate attention and possible action by the board, and the circumstances make it impracticable to provide notice as otherwise required by the Act.

- ✓ **General Prohibition Against Electronic Meetings.** The board is prohibited from conducting a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except for an emergency meeting if all board members consent in writing to the action, and if the written consents are filed with the minutes of that board meeting.



- ✓ **Teleconference Meetings.** Board meetings by teleconference, in which a majority of the board members are connected by electronic means, through audio or video or both, are permissible, so long as the meeting is conducted in a way that protects the rights of eligible persons and otherwise complies with the Act’s requirements. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting must identify at least one physical location so that eligible persons may attend and at least one board member or a person designated by the board must be present at that location. A board meeting held by teleconference must be audible by any eligible persons at the designated location. Participation by board members in a teleconference meeting constitutes their presence at that meeting as long as all board members participating in the meeting are able to hear one another and to hear any eligible person speaking on matters before the board.



- ✓ **Violations; Notice to Cure.**

- An eligible person may bring a lawsuit to enforce the Act’s requirements and to declare void any action taken by a board that violates the Act. However, a board action will not be determined to be void if the action was taken in substantial compliance with the Act.
- Prior to filing such a lawsuit, the eligible person **must** make a written demand on the board to cure or correct the action that allegedly violates the Act. That written demand must be submitted to the board within 90 days after the date the challenged action was taken, and must identify the challenged action and the nature of the alleged violation of the Act.





AB 240’s Provisions: Continued



- Within 30 days of receipt of that demand, the board must either: (i) cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct, or (ii) inform the demanding party in writing of the board’s decision not to cure or correct the challenged action. If the board decides to cure or correct that action, its act in doing so is not admissible as evidence of a violation of the Act.
- Within 15 days of receipt of the written notice of the board's decision to cure or correct or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party may file its lawsuit. If the demanding party fails to file its lawsuit by the end of that 15-day period, that party is barred from later filing that lawsuit.
- An eligible person who prevails in a lawsuit to enforce his or her rights under the Act is entitled to his or her reasonable attorney’s fees and court costs incurred in the lawsuit. However, if the company prevails, it cannot recover any attorney’s fees or costs unless the court finds the lawsuit to be frivolous, unreasonable, or without foundation.



- ✓ **Record Inspection Requirements.** AB 240 also expands the types of mutual water company records that are open to inspection and copying. AB 240 requires a mutual water company that operates a public water system to make specified records promptly available upon written request to an eligible person (defined the same as for open meeting purposes) upon payment of fees covering direct costs of duplication (as construed under the Public Records Act, “direct costs of duplication” refers to the direct overhead cost of actually making a photocopy and does not include staff time in compiling any responsive records). The records that are open to inspection and copying by eligible persons under AB 240 are:

- A. Agendas and minutes of board meetings conducted on or after January 1, 2014.
- B. A copy of the company’s annual budget.
- C. A copy of the accounting report that is now required.
- D. A copy of any records reporting the results of a water quality test.
- E. A copy of the company’s annual report that is distributed to shareholders.



(Any request for those records is limited to the three calendar years preceding the date of the request for the records.)



AB 240’s Provisions: Continued

- ✓ **Financial Requirements.** AB 240 also imposes two new financial requirements. First, a mutual water company that operates a public water system must adopt, in an open meeting, an annual budget each year on or before the start of the company’s fiscal year. That budget must be made available to eligible persons within 30 days of the board meeting at which the budget is adopted. Secondly, a mutual water company that operates a public water system must contract with a CPA or public accountant to conduct an annual review in accordance with generally accepted accounting standards of the company’s financial records and reports. An eligible person may request a copy of that report.



- ✓ **Lien Recording Authority.** AB 240 also specifically authorizes a mutual water company to record a lien against the real property of a shareholder who is delinquent in payment of any rate, charge or assessment related to water service provided to that shareholder’s property if: (A) recording of such a lien is authorized in the company’s articles of incorporation or bylaws, and (B) at least 20 days’ prior written notice regarding the recording of the lien is given to the shareholder. The recording of such a lien against real property has proven to be an effective way to collect delinquent charges, especially where a shareholder’s property will be transferred.



- ✓ **Repeat AB 54 Training Every 6 Years.** The new law clarifies that the mutual water company director training required under AB 54 must be repeated every 6 years. AB 54 did not specify how often that training needed to be repeated.
- ✓ **City of Maywood Improvements:** AB 240 also included \$1 million (reduced from \$7.5 million) to fund water system improvements in the City of Maywood.

The Value of CAMWC...

AB 240 was a primary driver for the creation of the California Association of Mutual Water Companies (CAMWC). With lawmakers threatening to add more costly requirements—or attempting take over mutual water companies—we can no longer afford to sit on the sidelines. The cost of new legislation is very real. CAMWC is your tool to fight against overreaching laws. Learn more about the many benefits of joining CAMWC by calling our office (916-933-3303) or visiting <http://www.calmutuals.org>.



AB 240 CHECKLIST

Open Meeting Requirements.

- For regular board of directors' meetings, post agenda in prominent, publicly accessible place (e.g., Company office door or window, facing outward) at least 4 days before meeting; or at least 2 days before the meeting if the meeting will only consider executive session items.
- By 24 hours before regular board meeting, determine whether any eligible persons have provided notice to attend the meeting.
- If regular meeting location will not accommodate expected attendance, consider postponing meeting and finding a suitable location to accommodate the anticipated attendance.
- Proceed with board meeting – board discussion and action must be limited to agenda items, unless an exception applies or required grounds for addition to the agenda are met.
- Minutes of a board meeting, other than executive session matters, must be made available to eligible persons within 30 days after the meeting.

Record Inspection Requirements.

- Promptly respond to any requests by any eligible person for any of the following company records (provided that the request must be limited to records for the 3 years preceding the request):
 - ✓ Agendas and minutes of board meetings conducted on or after January 1, 2014.
 - ✓ A copy of the company's annual budget.
 - ✓ A copy of the accounting report that is now required.
 - ✓ A copy of any records reporting the results of a water quality test.
 - ✓ A copy of the company's annual report that is distributed to shareholders.

Financial Requirements.

- Prepare a budget each year, on or before the start of the company's fiscal year.
- Contract with a CPA or public accountant to conduct an annual review of the company's financial records and reports.

AB 54 Training.

- Ensure all directors renew their training required under AB 54 at least every 6 years – and new directors complete their training within 6 months of taking office.

<http://www.calmutuals.org>